

ORDINANCE NO. 10-2007

**AN ORDINANCE ALLOWING FOR AUTOMATED PHOTOGRAPHIC
ENFORCEMENT OF TRAFFIC CONTROL DEVICE VIOLATIONS.**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONTGOMERY,
ALABAMA, as follows:

Section 1. Findings by the City Council of the City of Montgomery, Alabama.
The City Council (herein called "Council") of the City of Montgomery, Alabama (herein called "City"), in the State of Alabama, does hereby find and declare that there is a significant risk to the health and safety of the community from drivers of vehicles that run red lights within the City, and that the running of said traffic control signals against a red light is a public nuisance.

Section 2. Definitions.

In this article:

- (1) *Department* shall mean the Municipal Court Administrator's office of the City of Montgomery, Alabama.
- (2) *Intersection* shall mean the place or area where two (2) or more streets intersect.
- (3) *Owner* shall mean the owner of a motor vehicle as shown on the motor vehicle registration records of the Alabama Department of Revenue or the analogous department or agency of another state or country.
- (4) *Photographic traffic signal enforcement system* shall mean a system that:
 - a. Consists of a camera system installed to work in conjunction with an electrically operated traffic-control signal; and
 - b. Is capable of producing at least two (2) recorded images, at least one of which is capable of depicting the license plate attached to the motor vehicle that is not operated in compliance with the instructions of the traffic-control signal.
- (5) *Recorded image* means an image recorded by a photographic traffic monitoring system that depicts the rear of a motor vehicle and is automatically recorded on a photograph or digital image.
- (6) *System location* means the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation.

(7) *Traffic control signal* shall mean a traffic control device that displays alternating red, amber and green lights that directs traffic when to stop at or proceed through an intersection.

Section 3. Imposition of civil penalty for violations.

(a) The City Council finds and determines that a vehicle that proceeds into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal damages the public by endangering motor vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers.

(b) Except as provided in (c) and (d) of Section 3 below, the owner of a motor vehicle is liable for a civil penalty of fifty dollars (\$50.00) if a motor vehicle registered to that owner proceeds into an intersection at a system location when the traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal. Said fifty dollar (\$50.00) penalty shall be assessed for a first or second violation of this ordinance within a twelve month period.

(c) For a third or subsequent violation committed by the owner of the same motor vehicle during any twelve-month period, the amount of the civil penalty shall be one hundred dollars (\$100.00).

(d) An owner who fails to timely pay the civil penalty as set out in Section 4 below shall be subject to a late payment penalty of twenty-five dollars (\$25.00).

Section 4. Enforcement; procedures.

(a) The Municipal Court Administrator of the City of Montgomery is responsible for the administration of this ordinance.

(b) In order to impose a civil penalty under this ordinance, the department shall mail a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than the 30th day after the date the violation is alleged to have occurred to:

(1) The owner's address as shown on the registration records of the Alabama Department of Revenue; or

(2) If the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Alabama Department of Revenue.

(c) A notice of violation issued under this article shall contain the following:

- (1) A description of the violation alleged;
- (2) The date, time, and location of the violation;
- (3) A copy of a recorded images of the vehicle involved in the violation;
- (4) The amount of the civil penalty to be imposed for the violation;
- (5) The date by which the civil penalty must be paid;
- (6) A statement that the person named in the notice of violation may pay the civil penalty in lieu of appearing at an administrative adjudication hearing;
- (7) Information that informs the person named in the notice of violation:
 - a. Of the right to contest the imposition of the civil penalty in an administrative adjudication;
 - b. Of the manner and time in which to contest the imposition of the civil penalty; and
 - c. That failure to pay the civil penalty or to contest liability is an admission of liability.
- (8) A statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;
- (9) A statement that failure to pay the civil penalty within the time allowed shall result in the imposition of a late penalty of twenty-five dollars (\$25.00); and
- (10) Any other information deemed necessary by the department.

(d) A notice of violation under this article is presumed to have been received on the 10th day after the date the notice of violation is mailed.

(e) The civil penalty imposed by ordinance shall be paid within 30 days of the 10th day after the date the notice of violation is mailed.

(e) In lieu of issuing a notice of violation, the department may mail a warning notice to the owner.

Section 5. Administrative adjudication hearing.

(a) A person who receives a notice of violation may contest the imposition of the civil penalty by submitting a request for an administrative adjudication of the civil penalty, in writing, within fifteen (15) days of the 10th day after the date the notice of violation is mailed. Upon receipt of a timely request, the Department shall notify the person of the date and time of the hearing on the administrative adjudication. The administrative adjudication hearing shall be held before a hearing officer appointed by the Mayor.

(b) Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil penalty assessed in the notice of violation.

(c) The civil penalty shall not be assessed if after a hearing, the hearing officer enters a finding of no liability.

(d) In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence. The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the violation may be attested to in an administrative adjudication hearing by affidavit of an officer or employee of the city or the entity with which the city contracts to install or operate the system and who is responsible for inspecting and maintaining the system. An affidavit of an officer or employee of the city that alleges a violation based on an inspection of the pertinent recorded image is admissible in a proceeding under this article and is evidence of the facts contained in the affidavit.

(e) A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing is liable for administrative hearing costs in the amount of twenty-five dollars (\$25.00) in addition to the amount of the civil penalty assessed for the violation. A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty and costs within ten (10) days of the hearing.

(f) It shall be an affirmative defense to the imposition of civil liability under this article, to be proven by a preponderance of the evidence, that:

- (1) The traffic-control signal was not in proper position and sufficiently visible to an ordinarily observant person;
- (2) The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;
- (3) The operator of the motor vehicle violated the instructions of the traffic-control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle;
- (4) The motor vehicle was being operated as an authorized emergency vehicle under §32-5A-7 and §32-5-213 of the Alabama Code and that the operator was acting in compliance with that Chapter;
- (5) The motor vehicle was stolen or being operated by a person other than the owner of the vehicle without the effective consent of the owner;
- (6) The license plate depicted in the recorded image of the violation was a stolen plate and being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued;

(7) The presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this article more dangerous under the circumstances than non-compliance; or

(8) The person who received the notice of violation was not the owner of the motor-vehicle at the time of the violation.

(g) To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was stolen plate, the owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate had been timely reported to the appropriate law enforcement agency.

(h) Notwithstanding anything in this ordinance to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if:

(1) The person files an affidavit with the hearing officer stating the date on which the person received the notice of violation that was mailed to the person, if not received be the tenth (10th) day after same is mailed as set out in Section 5(a) above; and

(2) Within the fifteen (15) days of the date of actual receipt, the person requests an administrative adjudication hearing.

(i) A person who is found liable after an administrative adjudication hearing may appeal that finding of civil liability to the Circuit Court of Montgomery County, Alabama by filing a notice of appeal with the clerk of the municipal court. The notice of appeal must be filed not later than the 14th day after the date on which the administrative adjudication hearing officer entered the finding of civil liability. Unless the person, on or before the filing of the notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil penalty. An appeal shall be determined by the circuit court by trial de novo.

Section 6. Order.

(a) The hearing officer at any administrative adjudication hearing under this ordinance shall issue an order stating:

(1) Whether the person charged with the civil violation is liable for the violation; and

(2) The amount of any civil penalty, late penalty, and administrative adjudication cost assessed against the person.

(b) The orders issued under section 6(a) above may be filed in the office of the Municipal Court Administrator. The Municipal Court Administrator shall keep the orders in a separate index and file. The orders may be recorded using microfilm, microfiche, or data processing techniques.

Section 7. Effect of liability; exclusion of civil remedy.

(a) The imposition of a civil penalty under this article is not a criminal conviction for any purpose.

(b) A civil penalty may not be imposed under this article on the owner of a motor vehicle if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for a criminal violation of any portion of Article II, Chapter 5A, Title 32 (§32-5A-31, 34, and 35) of the Code of Alabama 1975, or any other municipal ordinance that embraces and incorporates the said statutes, that occurred simultaneously with and under the same set of facts which were recorded by the photographic traffic signal enforcement system.

(c) Nor record of an adjudication of civil penalty made under this ordinance shall be listed, entered, or reported on any criminal record or driving record, whether the record is maintained by the City of Montgomery or an outside agency.


(d) An owner who fails to pay the civil penalty or to timely contest liability for the penalty is considered to admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person.

(e) The city attorney or his designee is authorized to file suit to enforce collection of a civil penalty imposed under this article.

ADOPTED this the 6th day of February, 2006.


BOBBY N. BRIGHT, MAYOR 2/8/07

ATTEST:


BRENDA GALE BLALOCK, CITY CLERK

10-2007